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Khoo Guat Tee & Ors v Lim Kim Neo & Ors

B HIGH COURT (GEORGETOWN) — CIVIL SUIT NO 22NCVC-101–07 OF 2014
LIM CHONG FONG JC
27 JANUARY 2016

C *Succession — Kin inquiry — Procedure — Onus of proof to establish identity of beneficiary — Whether opinion evidence of family members on nature of relationship involved is admissible — Establishing legitimacy of children*

D *Succession — Kin inquiry — Validity of marriage — Application of Chinese customary law to determine validity of Chinese marriage prior to 1982 — Whether polyandry recognised under Chinese customary law*

E This was a kin inquiry proceeding pursuant to an indenture of conveyance dated 15 May 1922 ('indenture') wherein certain land was conveyed to a Lim Chye Luan 'for and during the term of her natural life and after her death, unto her sons Khoo Tiang Bee and Khoo Soon Bee, her daughter Khoo Oh Lean and her adopted grand-daughter Khoo Soo Leng and after the death of the last survivor of them unto their children whether adopted or lawful of the said
F Khoo Tiong Bee, Khoo Soon Bee, Khoo Oh Lean and Khoo Soo Leng in equal shares as tenants-in-common in fee simple'. Khoo Tiang Bee, the deceased had only one daughter. Khoo Soon Bee, the deceased had three daughters. Khoo Oh Lean, the deceased had two sons and five daughters. Khoo Soo Leng, the deceased had four sons and three daughters from her marriage with Lim Ewe
G Teng, deceased. She had another two daughters from her supposed marriage with Yeoh Guan Hong, deceased. She also had three children from her supposed marriage with Yeap Thean Lye, deceased. Twenty four children of Khoo Tiang Bee, Khoo Soon Bee, Khoo Oh Lean and Khoo Soo Leng were ascertained. The claim of 19 children as beneficiaries of the property was not
H challenged. However the claims of the five children of Khoo Soo Leng from her supposed marriages with Yeoh Guan Hong and Yeap Thean Lye (ie Yeoh Keat Sim (daughter), Yeoh Keat Ee (daughter), Yeap Keat Poh (daughter), Yeap Keat Im (daughter) and Yeap Ban Hin (son) were challenged on the grounds that they did not qualify as the lawful or adopted children intended in the
I indenture. It was contended that there was no proof that Khoo Soo Leng married Yeoh Guan Hong and Yeap Thean Lye and that even if they were married, Khoo Soo Leng indulged in polyandry and accordingly these children were illegitimate by reason that polyandry is prohibited under Chinese customary law. The following issues were also raised: (a) that the statement of

claim lacked the prayer for declaratory relief on the status of the marriages between Khoo Soo Leng and Yeoh Guan Hong as well as Yeap Thean Lye; (b) that the challenge on the status of Yeoh Keat Sim, Yeoh Keat Ee, Yeap Keat Im, Yeap Keat Poh and Yeap Ban Hin was mounted too late in the day and was therefore caught by laches; and (c) that the birth certificates of Yeoh Keat Sim, Yeap Keat Poh and Yeap Ban Hin that were produced had not been challenged and they must be accepted to show the validity of the marriage of their parents.

Held:

(1) Each interested claimant bears the onus of proof to establish that he/she is a beneficiary to the property subject to challenge, if any, made by other claimant(s) (see para 10).

(2) Although the right of the 19 children to the property was not challenged at the trial, the court must, in the absence of consent of all the parties that they were indeed beneficiaries, nonetheless in a kin inquiry be satisfied that there was sufficiently cogent evidence that they were the lawful or adopted children as intended in the indenture. In this regard, the court is entitled to rely on the documentary evidence as well as the oral testimony of witnesses who have personal knowledge of the relevant facts. Further, pursuant to s 50 of the Evidence Act 1950, the court can also take into account the opinion evidence of family members on the nature of the relationship involved (see paras 16–17).

(3) The applicable law governing the marital status of Khoo Soo Leng and Lim Ewe Teng as well as her alleged subsequent marriages with Yeoh Guan Hong and Yeap Thean Lye was Chinese customary law; *Wong Fong Yin & Anor v Wong Choi Lin & Anor and another suit* [2013] 4 MLJ 82 referred (see para 32).

(4) There is lawful Chinese customary marriage if there is mutual consensual union of the couple proved by cogent evidence of cohabitation and repute. It is also permissible prior to 1982 under Chinese custom for the man to have secondary wives but not for the woman to have secondary husbands. It follows that the marriage of the woman and her principal husband has to be terminated (by divorce during the lifetime of the principal husband) before she can re-marry another man (see para 36).

(5) There was insufficient proof of the marriage between Khoo Soo Leng and Yeoh Guan Hong and the subsequent marriage between Khoo Soo Leng and Yeap Thean Lye. There was at best cohabitation between Khoo Soo Leng and Yeoh Guan Hong as well as Yeap Thean Lye (see para 39).

(6) Khoo Soo Leng had always regarded Yeoh Keat Sim, Yeoh Keat Ee, Yeap Keat Im, Yeap Keat Poh and Yeap Ban Hin as her children because Khoo Soo Leng had in her will named and bequeath her property to them too.

But that did not ipso facto make them her legitimate children. Yeoh Guan Hong and Yeap Thean Lye were partners but not husbands of Khoo Soo Leng (see para 39).

(7) The purported marriages between Khoo Soo Leng and Yeoh Guan Hong in 1948 as well as between Khoo Soo Leng and Yeap Thean Lye in 1955 were invalid under Chinese customary law because of polyandry. This was so since the marriage of Khoo Soo Leng and Lim Ewe Teng was never dissolved. The marriage subsisted right till when Lim Ewe Teng passed away (see para 41).

(8) Yeoh Keat Sim, Yeoh Keat Ee, Yeap Keat Im, Yeap Keat Poh and Yeap Ban Hin were thus illegitimate children of Khoo Soo Leng. They were hence not the lawful children capable as beneficiaries of the property within the intent of the indenture (see para 42).

(9) The contention that the statement of claim lacked the prayer for declaratory relief on the status of the marriages between Khoo Soo Leng and Yeoh Guan Hong as well as Yeap Thean Lye lacked merit by reason that the prayer was not mandatory. The status had to be determined in any event in the kin inquiry based on the challenges made and evidence adduced as a whole (see para 43).

(10) The issue of delay and laches was irrelevant as the rights of lawful and adopted children intended in the indenture only crystallised after the death of the last survivor, to wit Khoo Soo Leng who passed away on 16 November 2001. Yeoh Keat Sim, Yeoh Keat Ee, Yeap Keat Im, Yeap Keat Poh and Yeap Ban Hin did not illustrate how they were prejudiced by this action having only been filed in July 2014 instead of at end 2001 (see para 43)

(11) The birth certificates showed Khoo Soo Leng as mother and Yeoh Guan Hong and Yeap Thean Lye as the respective father. There was however no entry as to whether they were married. Thus, the birth certificates per se were inconclusive on the marital status of their parents (see para 43).

[Bahasa Malaysia summary

Ini satu prosiding inkuiri keluarga ekoran satu indentur pindah milik bertarikh 15 mei 1922 ('indentur') di mana sebidang tanah dipindah milik kepada Lim Chye Luan untuk dan semasa tempoh hayatnya dan selepas meninggal dunia, kepada anak-anak lelakinya Khoo Tiang Bee dan Khoo Soon Bee, anak perempuannya Khoo Oh Lean dan cucu angkatnya Khoo Soo Leng dan selepas kematian waris terakhir mereka, kepada anak-anak mereka sama ada sah atau diangkat oleh Khoo Tiong Bee, Khoo Soon Bee, Khoo Oh Lean dan Khoo Soo Leng dengan bahagian yang sama sebagai penyewa bersama dengan yuran biasa. Khoo Tiang Bee, yang telah meninggal dunia, hanya mempunyai seorang anak perempuan. Khoo Soon Bee, yang telah meninggal dunia,

mempunyai tiga orang anak perempuan. Khoo Oh Lean, yang telah meninggal dunia, mempunyai dua orang anak lelaki dan lima anak perempuan. Khoo Soo Leng, yang telah meninggal dunia, mempunyai empat orang anak lelaki dan tiga anak perempuan daripada perkahwinan dengan Lim Ewe Teng, si mati. Dia mempunyai dua orang anak perempuan dengan perkahwinan yang didakwa dengan Yeoh Guan Hong yang telah meninggal dunia. Dia juga mempunyai tiga orang anak daripada perkahwinan yang didakwa dengan Yeap Thean Lye, si mati. 24 orang anak Khoo Tiang Bee, Khoo Soon Bee, Khoo Oh Lean dan Khoo Soo Leng disahkan. Tuntutan oleh 19 orang anak-anak sebagai benefisiari hartanah tidak dipertikaikan. Walau bagaimanapun, tuntutan lima orang anak Khoo Soo Leng hasil perkahwinan yang didakwa dengan Yeoh Guan Hong dan Yeap Thean Lye (iaitu Yeoh Keat Sim (anak perempuan), Yeoh Keat Ee (anak perempuan), Yeap Keat Poh (anak perempuan), Yeap Kiat Im (anak perempuan) dan Yeap Ban Hin (anak lelaki) dicabar atas alasan mereka tidak layak sebagai anak yang sah dan diangkat seperti yang dimaksudkan dalam indentur. Dihujahkan bahawa tiada bukti bahawa Khoo Soo Leng berkahwin dengan Yeoh Guan Hong dan Yeap Thean Lye dan bahawa jika pun mereka telah berkahwin, Khoo Soo Leng mengamalkan poliandri dan dengan itu, anak-anak tersebut tidak sah kerana poliandri dilarang di bawah undang-undang adat Cina. Isu-isu berikut dibangkitkan: bahawa penyata tuntutan tidak mengandungi permohonan deklaratori relief tentang status perkahwinan antara Khoo Soo Leng dan Yeoh Guan Hong dan juga Yeap Thean Lye; bahawa pertikaian tentang status Yeoh Keat Sim, Yeoh Keat Ee, Yeap Keat Im, Yeap Keat Poh dan Yeap Ban Hin dikemukakan terlalu lewat dan dengan itu terhalang oleh kelengahan; dan sijil kelahiran Yeoh Keat Sim, Yeap Keat Poh dan Yeap Ban Hin yang dikemukakan tidak dicabar dan dengan itu, kesemuanya mesti diterima untuk menunjukkan kesahan perkahwinan ibu bapa mereka.

Diputuskan:

(1) Setiap pihak berkepentingan mempunyai beban membukti bahawa dia adalah benefisiari hartanah, tertakluk pada cabaran, jika ada, yang dibuat oleh pihak-pihak menuntut yang lain (lihat perenggan 10).

(2) Walaupun hak 19 orang anak-anak terhadap hartanah tidak dicabar semasa perbicaraan, mahkamah mesti, tanpa kebenaran semua pihak bahawa mereka sememangnya benefisiari, meskipun dalam inkuiri keluarga, mesti dibuktikan bahawa terdapat bukti kukuh bahawa mereka anak-anak yang sah atau diangkat seperti yang dimaksudkan dalam indentur. Bagi ini, mahkamah boleh bersandar pada keterangan dokumentar dan juga keterangan lisan saksi-saksi yang mempunyai pengetahuan peribadi tentang fakta-fakta relevan. Selanjutnya, berikutan s 50 Akta Keterangan 1950, mahkamah boleh mengambil kira keterangan pendapat ahli-ahli keluarga tentang sifat hubungan terlibat (lihat perenggan 16–17).

(3) Undang-undang terpakai tentang status perkahwinan Khoo Soo Leng dan Lim Ewe Teng dan juga perkahwinan yang didakwa dengan Yeoh Guan Hong dan Yeap Then Lye mematuhi undang-undang adat Cina; *Wong Fong Yin & Anor v Wong Choi Lin & Anor and another suit* [2013] 4 MLJ 82 dirujuk (lihat perenggan 32).

(4) Berlaku perkahwinan yang sah menurut undang-undang adat Cina jika berlaku berlaku persetubuhan yang dipersetujui bersama antara pasangan dibuktikan oleh bukti kukuh kesedudukan dan reputasi. Ini juga dibenarkan sebelum 1982 di bawah adat Cina bagi seorang lelaki mempunyai isteri kedua tetapi bukan bagi seorang wanita mempunyai dua suami. Dengan itu, perkahwinan antara seorang wanita dengan dua orang suami prinsipal harus dibubarkan (melalui penceraian semasa hayat suami prinsipal sebelum di boleh berkahwin dengan lelaki lain (lihat perenggan 36)

(5) Tidak cukup bukti bagi perkahwinan antara Khoo Soo Leng dan Yeoh Guan Hong dan perkahwinan berikutnya antara Khoo Soo Leng dan Yeap Then Lye. Paling tidak, kesedudukan antara Khoo Soo Leng dan Yeoh Guan Hong dan juga Yeap Thean Lye (lihat perenggan 39).

(6) Khoo Soo Leng menganggap Yeoh Keat Sim, Yeoh Keat Ee, Yeap Keat Im, Yeap Keat Poh dan Yeap Ban Hin sebagai anaknya kerana Khoo Soo Leng telah, dalam wasiatnya, menamakan dan mewasiatkan hartanah kepada mereka juga. Namun begitu, ini tidak *ipso facto* menjadikan mereka anak sah taraf. Yeoh Guan Hong dan Yeap Thean Lye adalah pasangan tetapi bukan suami-suami Khoo Soo Leng (lihat perenggan 39).

(7) Perkahwinan yang didakwa antara Khoo Soo Leng dan Yeoh Guan Hong pada 1948 dan juga antara Khoo Soo Leng dan Yeap Thean Lye pada 1955 tidak sah di bawah undang-undang adat Cina kerana poliandri. Ini kerana perkahwinan antara Khoo Soo Leng dan Lim Ewe Teng tidak pernah dibubarkan. Perkahwinan wujud hingga Lim Ewe Teng meninggal dunia (lihat perenggan 41).

(8) Yeoh Keat Sim, Yeoh Keat Ee, Yeap Keat Im, Yeap Keat Poh dan Yeap Ban Hin, dengan itu, adalah anak sah taraf Khoo Soo Leng. Oleh itu, mereka bukan anak-anak yang sah yang boleh menjadi benefisiari hartanah dalam maksud indentur (lihat perenggan 42).

(9) Hujahan bahawa penyata tuntutan tidak mengandungi relif deklaratori tentang status perkahwinan antara Khoo Soo Leng dan Yeoh Guan Hing dan juga Yeap Thean Lye tidak bermerit atas alasan permohonan tersebut bukan mandatori. Status perlu diputuskan dalam apa jua keadaan dan inkuiri keluarga berdasarkan cabaran yang dibuat dan keterangan yang dikemukakan keseluruhannya (lihat perenggan 43).

(10) Isu kelewatan dan kelengahan tidak relevan kerana hak anak-anak yang sah dan diangkat yang dimaksudkan dalam indentur jelas selepas kematian dua orang waris, iaitu Khoo Soo Leng yang meninggal dunia pada 16 November 2001. Yeoh Keat Sim, Yeoh Keat Ee, Yeap Keat Im, Yeap Keat Poh dan Yeap Ban Him tidak menunjukkan bagaiman mereka terprejudis oleh tindakan ini yang difailkan pada Julai 2014 dan bukan hujung 2001 (lihat perenggan 43).

(11) Sijil-sijil kelahiran menunjukkan Khoo Soo Leng sebagai ibu dan Yeoh Guan Hong dan Yeap Thean Lye sebagai bapa. Tiada pengemukaan sama ada mereka telah berkahwin. Oleh itu, sijil kelahiran sahaja tidak konklusif tentang status perkahwinan ibu bapa mereka (lihat perenggan 43).]

Cases referred to

Abraham Penhas deceased, In Re [1950] 1 MLJ 104, CA (refd)
Capital Corp Securities Sdn Bhd v Abdul Malek Beh bin Abdullah [2005] 7 MLJ 35, HC (folld)
Cheng Ee Mun v Look Chun Heng & Anor [1962] 1 MLJ 411, CA (refd)
In the estate of Sim Siew Guan deceased [1932] 1 MLJ 95 (refd)
Jaafar bin Shaari & Anor (suing as administrators of the estate of Shofiah bte Ahmad, deceased) v Tan Lip Eng & Anor [1997] 3 MLJ 693, SC (refd)
Lee Choon Guan, deceased Lew Ah Lui (f), Re v Choa Eng Wan & Ors [1935] 1 MLJ 78 (refd)
Mary Ng & Anor v Ooi Gim Teong [1972] 2 MLJ 18 (refd)
Pembinaan SPK Sdn Bhd v Jalinan Waja Sdn Bhd [2014] 2 MLJ 322, CA (refd)
Selvarajoo a/l Palaniappa Pillai v Estate of Paramasivam a/l Palaniappa Pillai, deceased & 6 Ors [2015] AMEJ 1732, HC (refd)
Selvarajoo a/l Palaniappa Pillai v Paramasivam a/l Palaniappa Pillai [2013] 5 MLJ 748, HC (refd)
Wong Fong Yin & Anor v Wong Choi Lin & Anor and another suit [2013] 4 MLJ 82, HC (distd)
Woon Ngee Yew and others v Ng Yoon Thai and others [1941] 1 MLJ 37 (refd)
Yeap Leong Huat v Yeap Leong Soon & Anor and another application [1989] 3 MLJ 157, SC (refd)
Yew Yin Lai v Teo Meng Hai & Anor [2013] 8 MLJ 787, HC (refd)

Legislation referred to

Distribution Act 1958
Evidence Act 1950 s 50
Law Reform (Marriage and Divorce) Act 1976 ss 58, 59
Limitation Act 1953
Rules of Court 2012 O 43, O 44

Thayalan Muniandy (Thayalan & Assoc) for the plaintiffs and children of Khoo Tiang Bee and Khoo Soon Bee.
Ong Eng Kuan (CS Ong & Co) for the first and second defendants.
Balwant Singh Purba (Balwant Singh & Co) for the third and ninth defendants.
Regina a/p Daniel (Tho Su Fen with her) (CP Yeap & Co) for the fourth, seventh and eighth defendants.
Christina Siew (Lim Kean Siew & Co) for the estate Ho Ewe Hup and Ho Ewe Seng.

Lim Chong Fong JC:

INTRODUCTION

[1] This is the second kin inquiry that came before me after *Selvarajoo a/l Palaniappa Pillai v Estate of Paramasivam a/l Palaniappa Pillai, deceased & 6 Ors* [2015] AMEJ 1732, the difference being that this is pursuant to a deed of indenture of conveyance whereas the other was pursuant to the Distribution Act 1958.

[2] By an indenture of conveyance dated 15 May 1922 ('indenture'), the land known as Lot 143 Town Subdivision VI, Penang held under Grants Nos 1255 and 314 were conveyed to a Lim Chye Luan 'for and during the term of her natural life and after her death, unto her sons Khoo Tiang Bee and Khoo Soon Bee, her daughter Khoo Oh Lean and her adopted grand-daughter Khoo Soo Leng and after the death of the last survivor of them unto their children whether adopted or lawful of the said Khoo Tiong Bee, Khoo Soon Bee, Khoo Oh Lean and Khoo Soo Leng in equal shares as tenants-in-common in fee simple'.

[3] Khoo Tiang Bee, the deceased had only one daughter.

[4] Khoo Soon Bee, the deceased had three daughters.

[5] Khoo Oh Lean, the deceased had two sons and five daughters.

[6] Khoo Soo Leng, the deceased had four sons and three daughters from her marriage with Lim Ewe Teng, deceased. She had another two daughters from her supposed marriage with Yeoh Guan Hong, deceased. She also had three children from her supposed marriage with Yeap Thean Lye, the deceased.

THE INQUIRY PROCESS

[7] Since the filing of this action, there is a court order dated 12 February 2015 that ordered, inter alia, that the said Lim Chye Luan, Khoo Liang (*should*

have been Tiang) Bee and Khoo Soon Bee referred to in the indenture be presumed dead and that an inquiry be conducted for the following purpose:

> ... untuk menentukan dan/atau mengenalpasti siapakah anak-anak kepada Khoo Liang Bee, Khoo Soon Bee, Khoo Oh Lean dan Khoo Soo Leng, kesemuanya telah meninggal dunia, yang mempunyai hak untuk syer dalam tanah tersebut, yang sekarang dikenali sebagai Lot 172, Sekysen 2, Bandar Jelutong, Daerah Timur Laut, Pulau Pinang di bawah Conveyance 1922 tersebut dan selepas menentukannya dan/atau mengenalpasti orang-orang tersebut, untuk Perintah dan/atau arahan selanjutnya untuk tujuan meletakkan hak tanah tersebut kepada orang-orang dikenalpasti mengikut bahagian masing-masing sepertimana yang ditentukan oleh Yang Arif Hakim.

[8] Generally, the kin inquiry procedure is that as set out in para 34 of *Atkin's Encyclopaedia of Court Forms in Civil Proceedings*, (2nd Ed Vol 2) (1980 Issue) on Administration of Estates, viz:

> The evidence in support of the pedigree is given by affidavit. Because of many of the facts required in a pedigree of any length cannot possibly be proved strictly the rules of evidence are broadened in the case of a kin inquiry so that hearsay evidence will be admitted if given by a deponent who is a lawful blood relative, or the spouse of a lawful blood relative or the spouse of the deceased.
>
> Nevertheless any person, whether or not related, may, of course, depose to any facts within his own knowledge. In a complicated pedigree it will rarely be possible for one person to prove the whole, even allowing for the latitude referred to above. Care should be taken to ensure that, taken together, all the evidence does in fact cover the whole pedigree: if, for example, one affidavit proves a person to have been married once, and another affidavit proves a different marriage of the same person, evidence will still be required that that person was married only twice.
>
> The evidence in support of the pedigree should if possible be deposed to by the oldest living member of the intestate's family. Provided that the affidavits in support are so made, and the rules of evidence are very much broadened, as mentioned above.
>
> Obviously no application to the court for an inquiry as to the next-of-kin would be made unless it was known or anticipated that there would be some difficulty with some stage of the pedigree. The normal method of bridging such gaps is by means of advertisements in suitably selected papers, and the master will direct such advertisements accordingly. Equally, it is often important to prove a negative, and this can usually be done only by making the appropriate searches and proving that they do not disclose any relevant entry. It is only in this way, for example, that it may be possible to show that a husband and wife known to have had three children did not have any more.
>
> The master will give general directions as to inquiries to be pursued at the early stages of the inquiry (for example, to enquire of all likely relatives for information concerning missing persons and facts) and specific directions (for example, to inquire of A when he last heard of B) at later stages. Gathering in the mass of information from all available sources is, however, largely a matter for the solicitor

concerned and his agents, who should pursue all obviously reasonable avenues which open up during the course of the inquiry ...

[9] The aforesaid inquiry procedure can be of course be appropriately modified to tailor to the circumstances of each case subject to O 43 and 44 of the Rules of Court 2012 and the Evidence Act 1950 if a trial is held. Normally the best evidence available ought to be produced.

[10] The parties have filed pleadings herein and agreed to the trial procedure. Although during the commencement of the action various interested claimants to the property in the indenture ('property') have been identified and named as plaintiffs and defendants as seen in the pleadings that were filed, several of them have also claimed on behalf of others that were known besides themselves as beneficiaries. For those unknown, they have been mentioned as unascertainable in the pleadings presumably after reasonable efforts to identify them have been undertaken by the solicitors of the parties. Ultimately, each interested claimant bears the onus of proof to establish that he/she is a beneficiary to the property subject to challenge, if any, made by other claimant(s). For better comprehension and convenience, the relevant parties will hereinafter be referred to by their names.

[11] I conducted the inquiry by way of trial on 15 October 2015. The trial documents were marked as Bundles A and B where in the latter comprised the documentary evidence. All the documentary evidence carried Status B as agreed by the parties the effect of which is as explained in *Jaafar bin Shaari & Anor (suing as administrators of the estate of Shofiah bte Ahmad, deceased) v Tan Lip Eng & Anor* [1997] 3 MLJ 693. In addition, exhs WS1–WS11 were also admitted in evidence in the course of the trial.

[12] The following witnesses testified at the trial:

(a) Cheah Eng Huat ('PW1'), the co-administrator of the estate of Ho Saw Khoon, deceased;

(b) Lee Ewe Hua ('PW2'), the administrator of the estate of Ho Saw Eng @ Ah Eng, deceased;

(c) Ong Kok Chye ('PW3'), the son of Khoo Gaik Suat, deceased;

(d) Lim Kim Neo ('DW4'), the daughter of Khoo Soo Leng, deceased;

(e) Ho Ah Keoh ('DW5'), the adopted daughter of Khoo Oh Lean, deceased;

(f) Neoh Ming Fatt ('DW6'), the son of Ho Saw Bee, deceased;

(g) Yeoh Keat Sim ('DW7'), the daughter of Khoo Soo Leng, deceased;

(h) Yeap Keat Poh ('DW8'), the daughter of Khoo Soo leng, deceased;

(i) Tan Chin Guan ('DW9'), the personal representative of Ho Saw Heok, deceased;

(j) Ho Kong Hock ('DW10'), a co-executor of the estate of Ho Ewe Hup, deceased; and

(k) Ho Cheng Kim ('DW11'), the personal representative of the estate of Ho Ewe Seng, deceased.

[13] After the close of trial, the parties submitted their written closing submissions-in-chief and submissions in reply. Oral clarification with counsel was held on 14 December 2015.

CONTENTIONS OF THE PARTIES

[14] From the pleadings and during the course of the inquiry, 24 children of Khoo Tiang Bee, Khoo Soon Bee, Khoo Oh Lean and Khoo Soo Leng are ascertained. The claim of the following 19 children as beneficiaries of the property is not challenged by any of the parties herein at the trial:

(a) Khoo Tiang Bee:

  (i) Khoo Gaik Suat (lawful daughter);

(b) Khoo Soon Bee:

  (i) Khoo Gaik Chooi (lawful daughter);

  (ii) Khoo Gaik Kim (lawful daughter); and

  (iii) Khoo Gaik Chiew (lawful daughter);

(c) Khoo Oh Lean:

  (i) Ho Saw Khoon (lawful daughter);

  (ii) Ho Ewe Seng @ Ho Yew Seng (lawful son);

  (iii) Ho Ewe Hup @ Ho Yew Hup (lawful son);

  (iv) Ho Ah Choon (adopted daughter);

  (v) Ho Saw Heok @ Ah Hiok (adopted daughter);

  (vi) Ho Saw Eng @ Ah Eng (adopted daughter);

  (vii) Ho Saw Bee @ Ah Bee (adopted daughter); and

  (viii) Ho Ah Keoh @ Ah Cheok (adopted daughter); and

(d) Khoo Soo Leng:

  (i) Lim Ban Hock (lawful son);

(ii) Lim Kim Neo (lawful daughter);

(iii) Lim Ban Locke (lawful son);

(iv) Lim Kim In (lawful daughter);

(v) Lim Ban Siu (lawful son);

(vi) Lim Kim He (lawful son); and

(vii) Lim Kim Im (lawful daughter).

[15] However the aforementioned children challenged the claim of the following remaining five children of Khoo Soo Leng from her supposed marriages with Yeoh Guan Hong and Yeap Thean Lye:

(a) Yeoh Keat Sim (daughter);

(b) Yeoh Keat Ee (daughter);

(c) Yeap Keat Poh (daughter);

(d) Yeap Keat Im (daughter) and;

(e) Yeap Ban Hin (son),

because they do not qualify as the lawful or adopted children intended in the indenture. The contention advanced is that there is firstly no proof that Khoo Soo Leng married Yeoh Guan Hong and Yeap Thean Lye. In addition, even if they were married, Khoo Soo Leng indulged in polyandry and accordingly these children are illegitimate by reason that polyandry is prohibited under Chinese customary law.

FINDINGS OF THE COURT

[16] Although the right of the aforesaid 19 children to the property has not been challenged at the trial, I must (in the absence of consent of all the parties that they are indeed beneficiaries) nonetheless in a kin inquiry be satisfied that there is sufficiently cogent evidence that they are the lawful or adopted children as intended in the indenture.

[17] In this regard, I am entitled to rely on the documentary evidence adduced as well as the oral testimony of witnesses who have personal knowledge of the relevant facts. There is also s 50 of the Evidence Act 1950 which reads:

50 Opinion on relationship when relevant

(1) When the court has to form an opinion as to the relationship of one person to another, the opinion expressed by conduct as to the existence of

such relationship of any person who as a member of the family or otherwise has special means of knowledge on the subject is a relevant fact.

(2) Such opinion shall not be sufficient to prove a marriage in prosecutions under section 494, 495 or 498 of the Penal Code [Act 574].

ILLUSTRATIONS

(a) *The question is whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife is relevant.*

(b) *The question is whether A was a legitimate son of B. The fact that A was always treated as such by members of the family is relevant.* (Emphasis added.)

By that provision, I am also able to take into account the opinion evidence of family members on the nature of the relationship involved.

[18] As to Khoo Gaik Suat, PW3 who is her son affirmatively testified that his mother is the daughter of Khoo Tiang Bee. Since PW3 was neither cross-examined nor challenged, his testimony is deemed accepted as a matter of law following *Capital Corp Securities Sdn Bhd v Abdul Malek Beh bin Abdullah* [2005] 7 MLJ 35. Thus I find and hold that Khoo Gaik Suat is the lawful daughter of Khoo Tiang Bee.

[19] In respect of Khoo Gaik Chooi, Khoo Gaik Kim and Khoo Gaik Chiew, PW3 also testified that they were the daughters of Khoo Soon Bee. Moreover PW3 produced three statutory declarations, viz made by Khoo Gaik Chooi on 7 May 1991, Khoo Gaik Kim on 13 June 1971 and Khoo Gaik Chiew on 21 June 1971. These statutory declarations were made for the purpose of withdrawing certain sums of money deposited with Leong San Thong Khoo Kongsi by a Chun Boon Kong. The statutory declarations state that Chun Boon Kong was the father of Khoo Thye Hood and that Khoo Thye Hood had three sons, namely Khoo Soon Bee, Khoo Tiang Bee and Khoo Hock Bee. The three statutory declarations plainly state that Khoo Gaik Chooi, Khoo Gaik Kim and Khoo Gaik Chiew are the daughters of Khoo Soon Bee. Besides PW3 was again neither cross-examined nor challenged in this respect of his testimony.

In the circumstances, I find and hold that Khoo Gaik Chooi, Khoo Gaik Kim and Khoo Gaik Chiew are the lawful daughters of Khoo Soo Bee.

[20] With regard to Ho Saw Khoon, Khoo Guat Tee and her son PW1 are the co-administrators of the estate of Ho Saw Khoon, deceased. PW1 testified that Khoo Guat Tee is the daughter of Ho Saw Khoon and that Khoo Oh Lean is the mother of Ho Saw Khoon. PW1 also produced the will and grant of probate to the estate of Khoo Oh Lean. The will of Khoo Oh Lean clearly described Ho Saw Khoon as the daughter and Khoo Guat Tee being one of the

grandchildren. The grant of probate of the estate of Khoo Oh Lean also amongst others named Ho Saw Khoon therein as executrix.

Again PW1 was neither cross-examined nor challenged on his testimonies.

I therefore find and hold that Ho Saw Khoon is the lawful daughter of Khoo Oh Lean.

[21] As for Ho Ewe Seng, DW11 testified that Ho Ewe Seng is also known as Ho Yew Seng and the son of Khoo Oh Lean. Furthermore according to the will of Khoo Oh Lean produced by PW1, Ho Yew Seng is plainly named therein as the son of Khoo Oh Lean. He is a beneficiary and also one of the executors.

DW11 was neither cross-examined nor challenged on his testimony on this aspect.

In the premises, I find and hold that Ho Ewe Seng is the lawful son of Khoo Oh Lean.

[22] In respect of Ho Ewe Hup, DW10 testified Ho Ewe Hup who is also known as Ho Yew Hup is the son of Khoo Oh Lean. He also relied on the will of Khoo Oh Lean produced by PW1 wherein Ho Yew Hup has been named as a beneficiary.

Similarly, DW10 was neither cross-examined nor challenged on his testimony on this aspect.

Consequently, I find and hold that Ho Ewe Hup is the lawful son of Khoo Oh Lean.

[23] Next, as to Ho Saw Heok, DW9 testified that she is also known as Ah Hiok and is one of the adopted daughters of Khoo Oh Lean. Besides that, DW9 referred to the will produced by PW1 and pointed out that Ah Hiok is named as a beneficiary therein.

Again DW9's testimony has not been cross-examined or challenged on this aspect.

Accordingly, I find and hold that Ho Saw Heok is an adopted daughter of Khoo Oh Lean.

[24] In respect of Ho Ah Keoh, she herself (DW5) testified that she is also known as Ah Cheok and is an adopted daughter of Khoo Oh Lean. She further stated that she is also stated as a beneficiary in the will produced by PW1.

Likewise DW5 has neither been cross-examined nor challenged on this aspect.

Hence I find and hold that Ho Ah Keoh is an adopted daughter of Khoo Oh Lean.

[25] As for Lim Kim Neo, she also herself (DW4) testified that she is the daughter and one of the seven children of Khoo Soo Leng from her marriage with Lim Ewe Teng. She also testified that the rest of her siblings are Lim Ban Hock, Lim Ban Locke, Lim Kim In, Lim Ban Siu, Lim Ban He and Lim Kim Im.

DW4 was not cross-examined on this aspect.

I therefore find and hold that Lim Ban Hock, Lim Kim Neo, Lim Ban Locke, Lim Kim In, Lim Ban Siu, Lim Ban He and Lim Kim Im are the lawful children of Khoo Soo Leng.

[26] I noted that no witnesses testified for Ho Ah Choon, Ho Saw Eng @ Ah Eng and Ho Saw Bee @ Ah Bee.

Nonetheless, I noticed that they are also named in the will of Khoo Oh Lean produced by PW1 as beneficiaries being her adopted children.

In the premises, I also find and hold that Ho Ah Choon, Ho Saw Eng and Ho Saw Bee are the adopted children of Khoo Oh Lean.

[27] Now as to other children, Yeoh Keat Sim, Yeoh Keat Poh, Yeap Keat Ee, Yeap Keat Im and Yeap Keat Poh, they also claim to be the lawful children of Khoo Soo Leng.

[28] In respect of Yeoh Keat Sim, she personally (DW7) testified for herself and her sister Yeoh Keat Ee that they are children of Khoo Soo Leng from her marriage with Yeoh Guan Hong in 1948. Likewise as for Yeap Keat Poh, she (DW8) testified for herself and her siblings Yeap Keat Im and Yeap Ban Hin that they are also children of Khoo Soo Leng from her marriage with Yeap Thean Lye in 1955.

[29] From the evidence adduced at the trial, it is undisputed that Khoo Soo Leng married Lim Ewe Teng in 1935. They underwent Chinese customary marriage. A photograph where Khoo Soo Leng and Lim Ewe Teng appear as a married couple was produced. Moreover, there is also a statutory declaration dated 7 March 2005 of a Lim Ah Nooi who is the sister in law of Lim Ewe Teng that was produced. She deposed to the following:

> 2. I was present at the marriage ceremony of Lim Ewe Teng and Khoo Soo Leng in Penang on 1935.
>
> 3. As far as I know Lim Ewe Teng and Khoo Soo Leng were not divorced and Khoo Soo Leng remained the lawful wife of Lim Ewe Teng till his death on 1st November, 1995.

The obituary of Lim Ewe Teng that was published in *The Star* newspaper dated 4 November 1995 that listed Lim Ewe Teng's wives as Khoo Soo Beng, Ong Say

Nye (deceased) and Lo Sok Keong. Khoo Soo Leng only passed away later on 16 November 2001.

[30] Be that as it may, DW7 and DW8 testified that Khoo Soo Leng also married Yeoh Guan Hong and Yeap Thean Lye in 1948 and 1955 respectively. They were however unable to produce cogent contemporaneous evidence of the marriages such as proof of the wedding ceremony, photographs of the couple, death certificate of Yeoh Guan Hong/Yeap Thean Lye and epitaph on their tombstones which would be confirmatory of the marriages having taken place. All they could manage was to produce and rely on the wedding photographs of Yeap Keat Poh, Yeap Keat Im and Yeap Ban Hin showing, amongst others, the attendance of Khoo Soo Leng and the children of Lim Ewe Teng, photograph of the funeral of Khoo Soo Leng showing the attendance of the children of Lim Ewe Teng and the last will and testament of Khoo Soo Leng bequeathing her property to her 11 children.

That aside, DW7 and DW8 did not also produce cogent evidence that Khoo Soo Leng divorced Lim Ewe Teng before marrying Yeoh Guan Hong and divorced Yeoh Guan Hong before re-marrying Yeap Thean Lye. It was contended that divorce is to be presumed because Lim Ewe Teng married Ong Say Nya and Lo Sok Keong subsequent to his marriage with Khoo Soo Leng.

[31] Apposite to that, DW4 who was already ten years old at the time of the alleged marriage between Khoo Soo Leng and Yeoh Guan Hong in 1948 steadfastly testified as follows under cross-examination:

> Q: My instructions are, I put it to you, according to your witness statement, you have condemned your mother, you have praised your father.
>
> A: No, I did not condemn my mother. I am telling the truth.
>
> Q: Yes ... You have made various allegations. You have called her an adulteress. You have condemned her. You have made very serious allegations against her. You have praised your father who is a first class gentle man.
>
> A: I don't condemn my mother. I am only telling the truth what actually happened because we went through that life. When my mother left, my youngest sister was 1 year old, a baby. My youngest brother was 2 years old. The 2nd Defendant was 5 years old. I am not condemning her. I pray for her everyday in church that all the sins she has done, that God will forgive her. I don't condemn her ...
>
> Q: Yeah, but your father never fought for her to come back and all that. Your father, not somebody else Lim Ewe Teng. Did he protest and fight to get her back or not?
>
> A: The first time yes. But not the second time ...
>
> Q: I put it to you that their marriage ended.

A: *No, they were not divorced.*

[32] It is not in dispute that the applicable law governing the marital status of Khoo Soo Leng and Lim Ewe Teng as well as her alleged subsequent marriages with Yeoh Guan Hong and Yeap Thean Lye is Chinese customary law.

[33] In this regard, the law on customary marriages has been neatly summarised by Vernon Ong J (now JCA) in *Wong Fong Yin & Anor v Wong Choi Lin & Anor and another suit* [2013] 4 MLJ 82 as follows at pp 97–100:

Customary marriages and common law marriages

[23] The current law regulating non-Muslim marriages is the Law Reform (Marriage and Divorce) Act 1976 ('the LRA 1976'). It came into force on 1 March 1982. Under the LRA 1976, marriages solemnised prior to 1 March 1982 are recognised. These included marriages solemnised in accordance with the provision of statutes such as the Christian Marriage Ordinance 1956 and the Civil Marriage Ordinance 1952, Chinese customary marriages, Hindu marriages and common law marriages.

[24] Customary marriages have been accepted for a long time. As Sir Peter Benson Maxwell in *Reg v Willans* (1858) 3 Ky 16 said at p 32:

> But where the law of the place is inapplicable to the parties by reason of peculiarities of religious opinions and usages, then froma sort of moral necessity the validity of the marriage depends upon whether it was performed according to the rites of their religion.

This view was adopted in the Civil Law Enactment 1937 and later entrenched in ss 3(1) and 27 of the Civil Law Act 1956. The fact that that Chinese custom were common throughout Peninsular Malaysia was reflected in *Dorothy Yee Yeng Nam v Lee Fah Kooi* [1956] 1 MLJ 257, where Thomson CJ opined at p 263 that:

> The courts in effect have given judicial recognition to certain customs prevalent and thought to be prevalent among persons of Chinese race irrespective of their domicile or religion. They have thus set up what might be called a sort of common law as affecting persons of Chinese race and it would seem that the case is the same in those portions of the Federation which were not formerly part of the Straits Settlements or, perhaps more accurately, which were part of the former Federated Malay States.

[25] *According to In Re Lee Siew Kow, deceased Yeo Siew Neo (W) v Gan Eng Neo (W) & Ors* [1952] 1 MLJ 184 , *the ingredients of a valid Chinese customary marriage were a marriage based on mutual consent. The requirements of ceremony, a contract, and repute of marriage were only evidentiary and not essential for the validity of the marriage.* In this connection, it is also pertinent to note the Federal Court's decision in *Re Lee Gee Chong deceased; Tay Geok Yap & Ors v Tan Lian Cheow* [1965] 1 MLJ 102 that to prove a Chinese secondary marriage it is only necessary to prove a common intention to form a permanent union as husband and secondary wife and the formation of a union by the man taking the woman as his secondary wife and

the woman taking the man as her husband. In law, the requirements of marriage with regards to the first wife and secondary wife are also the same; in *In the estate of Yeow Kian Kee (deceased); Er Gek Cheng v Ho Yeng Seng* [1949] 1 MLJ 171, Murray-Aynsley CJ said at p 172:

> *The legal requirements for marriage with a t'sai and a t'sip are, I think, the same. This means that the law of this Colony merely requires a consensual marriage, that is, an agreement to form a relationship that comes within the English definition of marriage..*

Murray-Aynsley CJ also touched on the question of whether there was a need to comply strictly with the Chinese customary rites at p 173:

> ... I think in these cases the observances of rites and ceremonies is merely evidence of intention. As with us, the use of Hindu marriage ceremonies is not a matter of legal requirement, it is merely evidence.
>
> In the case of Chinese marriages, in most cases, the ceremonies regarded as essential at the time of the *Six Widows Case* (12 SSLR 120) have disappeared and there remains a simple form of consensual marriage, quite in conformity with the requirements of the Canon Law. (Emphasis added.)

[26] *In Re Estate of Chong Swee Lin; Kam Soh Keh v Chan Kok Leong & Ors* [1997] 4 MLJ 464 the petitioner, claiming to be the lawful husband of the deceased, filed a petition for letters of administration to the deceased's estate. The petition was opposed by the respondents on the grounds that the petitioner was never the lawful husband of the deceased. They contended that they should be made administrators since they were the lawful children of the deceased. The petitioner stated that he and the deceased got married by way of a Chinese customary marriage ceremony which involved hosting a dinner for a few of their friends. The petitioner also produced a marriage certificate which he had purchased from a Chinese book store which was filled up and signed by the petitioner and the deceased as husband and wife, the signing being witnessed by two of the friends present at the dinner. It was also asserted that they had resided together in a flat after they were married. On the evidence the High Court judge found that there was a material contradiction between the evidence given by the only surviving witness who signed the marriage certificate and that by the petitioner. Moreover, based on the surrounding circumstances, the signature purported to be that of the deceased on the marriage certificate could not have been that of the deceased. Further, contrary to the petitioner's claim that he had cohabited with the deceased, there was evidence to show that he was merely a tenant residing in one of the rooms in the flat. In dismissing the petition, the High Court held that the law merely required a Chinese customary marriage to be a consensual marriage with an agreement to form a relationship that came within the English definition of marriage. The specific requirements needed to fulfil certain vital elements of Chinese marriage rites were only ceremonies to evidence the intention of the parties to tie the marital knot. Such intention however, could be implied and expressed in other forms.

[27] In *Ching Kwong Suen v Soh Siew Yoke; Soh Siew Yoke v Ching Kwong Kuen* [1982] 2 MLJ 139 Ching (the appellant) and Soh (the respondent) appealed against a magistrate's order ordering Ching to pay Soh $1,500 per month maintenance to Soh and $1,000 per month for her daughter. The question for determination was

whether there was a valid marriage. The High Court held that Ching and Soh had gone through a ceremony of marriage, that they had lived openly as husband and wife and that there was a valid marriage between Ching and Soh. The court's finding was predicated on the following grounds:

(a) when Soh first met Ching in 1957, she was 19 years old. Soh came from a humble background; whereas Ching came from a rich and respectable background;

(b) in 1958 they began to live together at Soh's place;

(c) in 1959, a simple marriage ceremony was arranged and Ching gave Soh's mother $1,000 towards the expenses for the wedding. Both Ching and Soh served tea to Soh's mother who then gave them each a red packet. The ceremony was attended by 20–30 people; and

(d) they lived together as husband and wife for 19 years; and Soh bore Ching three children.

[28] As an aside, the view expressed in *Reg v Willans*, is equally applicable to Hindus as well (*Rex v Govindasamy* [1933] 2 MLJ 97; *Ramasamy v Public Prosecutor* [1938] 1 MLJ 137; *Paramesuari v Ayadurai* [1959] 1 MLJ 195; and *Nagapushani v Nesaratnam & Anor* [1970] 2 MLJ 8). (Emphasis added.)

[34] As to the Chinese custom on polygamy, that is to say the practice of having more than one wife or husband at the same time, Lee Hun Hoe CJ (Borneo) said as follows in the Supreme Court case of *Yeap Leong Huat v Yeap Leong Soon & Anor and another application* [1989] 3 MLJ 157 at p 161:

Lam Wai Hwa's case [1983] 2 MLJ 302 is a culmination of a series of cases on Chinese customary marriage. In the early days it was difficult to prove the actual essentials of marriage because there was no accepted and uniform practice, not only in Singapore and Malaysia but also in China itself. Hence, experts were invariably called to assist the courts. As time went on the courts began the process of watering down the requirements of proof of a Chinese marriage by invoking the common law technique of presuming a marriage from the evidence of long cohabitation and repute first to secondary marriage and gradually to primary marriage. The court will upon proper evidence presume a secondary marriage between a Chinese man and woman from cohabitation and repute: *Ngai Lau Shia @ Low Hong Sian v Low Chee Neo* [1921] 14 SSLR 37. *According to the Chinese law of marriage, which is applied to Penang in the case of Chinese residents, a Chinese may have secondary wives (sometimes called 'tsips') who have the status of wives and whose children are legitimate. Although some sort of ceremony is usual when a 'tsip' is taken, proof of the performance of a ceremony is not essential to establish the relationship*: *Cheang Thye Pin & Ors v Tan Ah Loy* [1920] AC 369.

By 1949 it became established that all that was required for proof of a secondary marriage was mutual consent to be married and that the requirements of a ceremony of a formal contract and of repute of marriage were evidentiary only and not essential to the acquisition of the status of a secondary wife. See *In The Estate of Yeow Kian Kee (deceased); Er Gek Cheng v Ho Ying Seng* [1949] 1 MLJ 171 and 174 at p 174; *In re Lee Siew Kow (deceased); Yeo Siew Neo (w) v Gan Eng Neo (w)* [1952] 1 MLJ 102. In

fact as early as 1920 the Privy Council held in *Cheang Thye Pin & Ors v Tan Ah Loy* [1920] AC 369 that although some sort of ceremony is usual when a secondary wife is taken, proof of the performance of a ceremony is not essential to constitute a secondary wife. *In Re Lee Gee Chong (deceased); Tay Geok Yap v Tan Lian Cheow* [1965] 1 MLJ 102 the Federal Court upheld the decision of Ambrose J that the respondent was a secondary wife and therefore the lawful widow of the deceased. The learned judge was of the view that to prove a Chinese secondary marriage it was only necessary to prove a common intention to form a permanent union as husband and secondary wife and the formation of the union by the man taking the woman as his secondary wife and the woman taking the man as her husband.

Alongside the common law and customary law of the Kadazans, Ibans and other peoples of Malaysia and Singapore, Chinese customary law was also given recognition by the courts and legislature. The requirements of establishing marriages according to Chinese customary law have been set down by cases over the years. As Chinese customary law is part of the law of the land it is not necessary to prove such law. It is a matter of precedent. The finding of a court of competent jurisdiction is the best evidence of such custom when it is in issue in subsequent cases. Opinions of witnesses including experts and of writers of treaties to which the court have been referred to from time to time are merely to assist the court to come to a proper conclusion. (Emphasis added.)

[35] On polyandry, which is the form of polygamy whereby a woman takes two or more husbands at the same time, Murray-Aynsley CJ said as follows in *In Re Abraham Penhas deceased* [1950] 1 MLJ 104 at p 105:

The appellant did not in the appeal rely on the allegation that the deceased was monogamous by custom and the respondent polygamous. *It was not proved that Jews in Singapore are monogamous and, in any event, it is hard to see how it could affect the present case, as no one has suggested that Chinese women indulge in polyandry*. Here monogamy is a question of personal disability. (Emphasis added.)

[36] The parties herein did not proffer or lead expert evidence to prove that the Chinese custom on marriages is either different or deviates from that as set out in the aforesaid case authorities. I may therefore surmise that there is lawful Chinese customary marriage if there is mutual consensual union of the couple proved by cogent evidence of cohabitation and repute. It is also permissible prior to 1982 under Chinese custom for the man to have secondary wives but not for the woman to have secondary husbands. It follows that the marriage of the woman and her principal husband has to be terminated (by divorce during the lifetime of the principal husband) before she can re-marry another man.

[37] The law on Chinese customary divorce is explained by Wee Chong Jin J (later CJ (Singapore)) in *Cheng Ee Mun v Look Chun Heng & Anor* [1962] 1 MLJ 411 at p 412:

At the trial the defendants, who were the trustees of the will of the testator, called an expert to give evidence on Chinese custom and Chinese law. This expert gave

> evidence that a marriage between two Chinese persons celebrated in the traditional manner between 1910 and 1920 could be dissolved only by the husband divorcing the wife and that the wife could not divorce the husband. This expert also gave evidence that before 1933 mere long continued separation did not constitute a dissolution of such a marriage. He also gave evidence that where a woman who is living apart from her husband goes through a form of marriage with another man no valid marriage is constituted because she is not a divorced woman ...
>
> Before us it was urged by counsel for the appellant that the learned trial judge should have rejected the evidence of the expert that according to Chinese custom a married woman could not divorce her husband and should have held that there were no provisions in law in Singapore preventing a wife married according to Chinese custom in Singapore from unilaterally divorcing her husband. It was also urged by counsel that from the fact that the appellant's mother had ceased to live with her husband within three weeks after the marriage and had subsequently contracted a further marriage the proper inference to be drawn was that she intended and regarded her original marriage to be at an end and accordingly the plaintiff was a legitimate child.
>
> I am unable to accept these contentions. There was abundant evidence on which the learned trial judge could come to the conclusion that there was no dissolution of the marriage between the plaintiff's mother and Boey Peng Khwai at the date when she went through a form of marriage ceremony with the plaintiff's natural father. *There was also no evidence that there was a custom prevailing in China and adopted by the Chinese in Singapore that a married woman could unilaterally divorce her husband and in fact the evidence of the expert on Chinese law and custom is to the contrary*.
>
> *One fundamental principle, I think, must be borne in mind, namely, that once a valid marriage is contracted between two parties that marriage exists until there is a valid divorce or until the marriage is terminated by death*.
>
> *A corollary to that fundamental principle is that neither party, while the marriage subsists, is free to contract another marriage with a third person. Any such union would therefore not result in a valid marriage and children of such a union would not be a legitimate children ...* (Emphasis added.)

Furthermore in *Mary Ng & Anor v Ooi Gim Teong* [1972] 2 MLJ 18, Mohamed Azmi J (later SCJ) said as follows at pp 19–20:

> The next question to be considered is: What form does such a divorce take? From the expert evidence of Mr Lee, assuming there are grounds for divorce, the husband must make the divorce known to friends and relatives. *There is nothing specific laid down, but practice has it that the husband with his relatives and friends should take his wife physically to the home of her parents and there in the presence of her parents announce her faults and pronounce the fact that he is divorcing her. The real essence of this practice is that the divorce must be made publicly known. Mr Lee is of the opinion that, since there are no fixed rules laid down, so long as the divorce and the ground for it are made publicly known it is sufficient. The cardinal rule is that it should not be made secret*. In the instant case, as the facts sworn in the respondent's affidavit particularly para 8(b) have been admitted, I find that the respondent not only has a valid cause under Chinese customary law to divorce Mary Ng but also from his evidence in court – which has not been seriously challenged – a divorce has in fact taken place

> in accordance with Chinese custom. In my view, the particulars given in the respondent's affidavit regarding the disrespectful and disobedient behaviour of his wife towards him and his mother come within one of the seven grounds for divorce under Chinese customary law. According to the evidence of the respondent, on May 23 1970 he went to his mother's house at Ipoh where he told his mother that he wanted to divorce his wife according to Chinese customary law and a family gathering was accordingly arranged. The following day in the presence of his mother, grandmother, two uncles, an old family friend and his wife's godfather (Mr Eu Theam Phee), he announced the various misconducts of his wife and told the gathering that he was divorcing her as from that day, ie May 24 1970. He also told those present that he would be announcing the divorce in the newspapers in due course. Although the respondent had not taken his wife to her parents' house for the purpose of divorce, to my mind, what he did is more than sufficient to publicise the divorce. Apart from the public pronouncement which he made personally at the family gathering at Ipoh, Mary Ng was notified by registered letter dated May 7 1970 of the respondent's intention to seek a divorce. The fact that the divorce was intended to be a unilateral one according to Chinese customary law was also made clear to Mary Ng's solicitors dated June 10 1970. The fact of the divorce was also made public in *Nanyang Siang Pau* – a local Chinese newspaper – on June 19 1970. What is important is that publicity as to the intention and fact of divorce must be given and must not be kept secret. In Woon Ngee Yew's case, publicity given to friends of the husband was held to be sufficient notoriety. In the instant case, the respondent's intention was made known even before the divorce; and not only was the divorce pronounced at the gathering at Ipoh where Mary Ng's godfather was present but also the fact of divorce was made known to Mary Ng's solicitors in writing and this was followed by publication in the *Chinese Press*. The fact that the respondent did not take his wife to her mother's house for the purpose of announcing the divorce is not fatal having regard to the real intention behind the practice in ancient times. This requirement has, in my view, been complied with. As stated by the expert witness, where the wife had already left the husband's household there was no need to comply with the practice so long as sufficient publicity of the fact of the divorce had been made.
>
> Under the circumstances, I find the respondent had lawfully divorced the first applicant according to Chinese customs with effect from May 24 1970 ... (Emphasis added.)

[38] Thus it is seen in *In the estate of Sim Siew Guan deceased* [1932] 1 MLJ 95, *Re Lee Choon Guan, deceased Lew Ah Lui (f) v Choa Eng Wan & Ors* [1935] 1 MLJ 78 and *Woon Ngee Yew and others v Ng Yoon Thai and others* [1941] 1 MLJ 37 that the prevailing Chinese custom is for the husband to inform his clansman or his relations that he has divorced his wife. The husband can divorce his wife at will but he must have demonstrated his resolute intention to break the relationship and notoriety given to the fact of the dissolution of the marriage.

[39] Bearing these principles on Chinese customary marriage and divorce in mind, I am of the view that there is firstly insufficient proof of the marriage

between Khoo Soo Leng and Yeoh Guan Hong as claimed by Yeoh Keat Sim and Yeoh Keat Ee. Likewise, there is insufficient proof of the subsequent marriage between Khoo Soo Leng and Yeap Thean Lye as claimed by Yeap Keat Im, Yeap Keat Poh and Yeap Ban Hin. I find that there was at best cohabitation between Khoo Soo Leng and Yeoh Guan Hong as well as Yeap Thean Lye because of the promiscuous nature of Khoo Soo Leng as testified by her daughter DW4. Khoo Soo Leng seems to be unable to hold on to a permanent union. The other element of repute that is underpinned by recognition particularly by the husband's family as emphasised in *Re Lee Choon Guan, deceased Lew Ah Lui (f) v Choa Eng Wan & Ors* is notably absent. I have no doubts Khoo Soo Leng had always regarded Yeoh Keat Sim, Yeoh Keat Ee, Yeap Keat Im, Yeap Keat Poh and Yeap Ban Hin as her children because Khoo Soo Leng had in her will named and bequeath her property to them too. But that does not ipso facto make them her legitimate children. I noticed the unexplained distinct absence of Yeap Thean Lye during the wedding ceremony of all his children notwithstanding that the children of Lim Ewe Teng were present therein. There is also no obituary advertisement in the newspapers or tombstone epitaph of Yeoh Guan Hong and Yeap Thean Lye stating Khoo Soo Leng as wife. Ordinarily, these would have been cogent evidence of repute. In the premises, I find and hold that Yeoh Guan Hong and Yeap Thean Lye were partners but not husbands of Khoo Soo Leng.

[40] Be that as it may, even if there were marriages that took place between Khoo Soo Leng and Yeoh Guan Hong and subsequently Yeap Thean Lye, it is critical that there is proof of divorce that have taken place in her marriages with Lim Ewe Teng and later Yeoh Guan Hong. Otherwise, she would have indulged in polyandry which is not permissible under Chinese custom. There is however no cogent proof of the divorces, whether by a court decree or Chinese customary divorce. In fact, there is testimony to the contrary by DW4 whom I find to be a frank and truthful witness that Lim Ewe Teng never divorced Khoo Soo Leng. I am mindful that Lim Ewe Teng subsequently married Ong Say Nya and Lo Sok Keong but that is inconsequential because he could indulge in polygamy under Chinese custom at that material time. These subsequent marriages are however per se inadequate in my view to support the presumption of divorce by reason that they can be equally justified as lawful secondary marriages. Thus, Lim Ewe Teng and Khoo Soo Leng might have been separated and living apart but on the totality of the available evidence before me, I am not able to conclude that they were divorced. The obituary of Lim Ewe Teng in *The Star* newspaper corroborates that he did not divorce Khoo Soo Leng from his own immediate family's point of view. In fact DW 8 testified that Khoo Soo Leng even attended the funeral of Lim Ewe Teng although she did not perform the rites as wife.

[41] In the circumstances, I find and hold that the purported marriages between Khoo Soo Leng and Yeoh Guan Hong in 1948 as well as between Khoo Soo Leng and Yeap Thean Lye in 1955 were nonetheless invalid under Chinese customary law because of polyandry. This is so since the marriage of Khoo Soo Leng and Lim Ewe Teng was never dissolved. The marriage subsisted right till 1 November 1995 when Lim Ewe Teng passed away.

[42] Consequently, I regret but to make the finding herein that Yeoh Keat Sim, Yeoh Keat Ee, Yeap Keat Im, Yeap Keat Poh and Yeap Ban Hin are illegitimate children of Khoo Soo Leng. They are hence not the lawful children capable as beneficiaries of the property within the intent of the indenture.

[43] For the record, I noted that they have also contended in their closing submissions that in para 28(4) of the statement of claim, it was pleaded only to inquire into who are the children (and not the lawful and adopted) children of Khoo Liang Bee, Khoo Soon Bee, Khoo Oh Lean and Khoo Soo Leng and that the inquiry must be confined to the pleaded case, following *Pembinaan SPK Sdn Bhd v Jalinan Waja Sdn Bhd* [2014] 2 MLJ 322. I am however of the view that the contention lacks merit because it must be read in conjunction with para 20 of the statement of claim too. That taken together and as stated in the court order dated 12 February 2015, it is plain and obvious that the inquiry is to determine the lawful and adopted children as intended by the indenture.

There is the further contention that the statement of claim lacked the prayer for declaratory relief on the status of the marriages between Khoo Soo Leng and Yeoh Guan Hong as well as Yeap Thean Lye. This contention in my view lacks merit too by reason that the prayer is not mandatory. The status has to be determined in any event in the kin inquiry based on the challenges made and evidence adduced as a whole; see para 34 of *Atkin's Encyclopaedia of Court Forms in Civil Proceedings*, (2nd Ed Vol 2) (1980 Issue) on Administration of Estates.

There is also the contention that the challenge on the status of Yeoh Keat Sim, Yeoh Keat Ee, Yeap Keat Im, Yeap Keat Poh and Yeap Ban Hin has been mounted too late in the day. In other words, the challenge was caught by laches. Reliance is made on the case of *Wong Fong Yin & Anor v Wong Choi Lin & Anor and another suit* wherein the plaintiff was found guilty of laches because they have acquiesced to the legitimacy of the child and only later mounting a challenge to the child's legitimacy. The short answer here is that the facts therein are readily distinguishable. I am mindful here that all the children of Khoo Soo Leng have been amiable to one another and have jointly attended wedding and funeral ceremonies. In my view, they have recognised each other as children and part of the bigger family of Khoo Soo Leng but it is a starkly different proposition altogether to regard them as having acquiesced to each other as her legitimate children. I do not think that the acceptance and

recognition extended to that proposition which is in any event a question of law for determination by the court.

Besides that, the issue of delay and laches is to my mind irrelevant as the rights of lawful and adopted children intended in the indenture only crystallised after the death of the last survivor, to wit Khoo Soo Leng who passed away on 16 November 2001. Anyway, Yeoh Keat Sim, Yeoh Keat Ee, Yeap Keat Im, Yeap Keat Poh and Yeap Ban Hin did not illustrate how they were prejudiced by this action having only been filed in July 2014 instead of at end 2001. I am unable to see any. The application of the Limitation Act 1953 has been also alluded to but it is unclear as to which exact provision has been relied upon by them.

Finally there is the contention that the birth certificates of Yeoh Keat Sim, Yeap Keat Poh and Yeap Ban Hin that were produced have not been challenged and they must be accepted to show the validity of the marriage of their parents following *Selvarajoo a/l Palaniappa Pillai v Paramasivam a/l Palaniappa Pillai* [2013] 5 MLJ 748. The birth certificates do show Khoo Soo Leng as mother and Yeoh Guan Hong and Yeap Thean Lye as the respective father. There is however no entry as to whether they were married. Thus it is my view that the birth certificates per se are inconclusive on the marital status of their parents. Ancillary to that, it has also been argued that any finding of adulterous conduct on the part of Khoo Soo Leng must be established beyond a reasonable doubt following *Yew Yin Lai v Teo Meng Hai & Anor* [2013] 8 MLJ 787. This is a red herring as that case concerned a claim for damages pursuant to the cause of action of adultery as provided in ss 58 and 59 of the Law Reform (Marriage and Divorce) Act 1976. There is no claim against Khoo Soo Leng here as such.

CONCLUSION

[44] For the foregoing reasons, I hold that the following persons are the lawful or adopted children of Khoo Liang Bee, Khoo Soon Bee, Khoo Oh Lean and Khoo Soo Leng as intended by the indenture:

(a) Khoo Gaik Suat;

(b) Khoo Gaik Chooi;

(c) Khoo Gaik Kim;

(d) Khoo Gaik Chiew;

(e) Ho Saw Khoon;

(f) Ho Ewe Seng @ Ho Yew Seng;

(g) Ho Ewe Hup @ Ho Yew Hup;

(h) Ho Ah Choon;

(i) Ho Saw Heok @ Ah Hiok;

(j) Ho Saw Eng @ Ah Eng;

(k) Ho Saw Bee @ Ah Bee;

(l) Ho Ah Keoh @ Ah Cheok;

(m) Lim Ban Hock;

(n) Lim Kim Neo;

(o) Lim Ban Locke;

(p) Lim Kim In;

(q) Lim Ban Siu;

(r) Lim Kim He; and

(s) Lim Kim Im.

Consequently, they or their estate if the deceased are entitled to equal shares in the property.

[45] There shall be no order as to costs.

Order accordingly.

Reported by Kanesh Sundrum